

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Sandlands C&D, LLC, and Express)
Disposal Service, LLC,)
)
Plaintiffs,)
)
vs.)
)
County of Horry, a Political Subdivision of)
the State of South Carolina, acting by and)
through its duly elected County Council,)
and Horry County Solid Waste Authority,)
Inc.,)
)
Defendants.)
_____)

Civil Action No.: 4:09-cv-01363-TLW

ORDER

The Court has determined that the above-captioned action involves a question of application and interpretation of the law of the State of South Carolina which may be determinative of the action, and there appears to be no controlling precedent in the decisions of the Supreme Court of South Carolina. Accordingly, pursuant to South Carolina Appellate Court Rule 228, the United States District Court for the District of South Carolina hereby certifies the question of law listed below to the Supreme Court of South Carolina. This question is based on the following factual findings.

I. FACTUAL FINDINGS

On March 17, 2009, the County Council for Horry County, South Carolina, enacted Horry County Ordinance 02-09 entitled “An Ordinance Regulating the County-Wide Collection and Disposal of Solid Waste Generated Within Horry County and for the Prohibition of the Disposal of Solid Waste Materials in any Manner Except as Set Forth Herein; and Providing Penalties for Violation Thereof” (“Flow Control Ordinance”). The Horry County Council amended the Flow

Control Ordinance on April 7, 2009. The Flow Control Ordinance provides that:

. . . [t]he County hereby designates the disposal facilities operated by the [Horry County Solid Waste Authority] and/or public owned facilities designated by the [Horry County Solid Waste Authority] for the acceptance or disposal of acceptable waste. The dumping or deposition by any person at any place other than at the designated facilities of any acceptable waste generated within the County is prohibited.

Horry County Ordinance 02-09, Art. II, § 2.1.1.

The ordinance further provides that the Horry County Solid Waste Authority “shall establish such tipping fees as it deems appropriate to effect the purposes of this ordinance and to fund the activities and functions of the [Horry County Solid Waste Authority],” and adds that “[i]t shall be a violation of this Ordinance for any person to dispose of acceptable waste generated within the County at any location or place other than at a designated facility as designated under this Ordinance.” Horry County Ordinance 02-09, Art. VIII, §§ 8.1.1, 8.1.4. The ordinance further notes that “[i]t shall be a violation of this law for any hauler to take acceptable waste to any facility other than a designated facility.” Horry County Ordinance 02-09, Art. IX, § 9.1.2.

The plaintiff Sandlands C&D, LLC (“Sandlands”) is a privately-owned South Carolina company that owns and operates a landfill in Marion County, South Carolina. The Sandlands landfill is permitted by the South Carolina Department of Health and Environmental Control to accept construction and demolition (C&D) waste pursuant to the South Carolina Solid Waste Policy and Management Act of 1991, S.C. Code Ann. §§ 44-96-10 *et. seq.* The record indicates that the Sandlands landfill is located outside, but near, the Horry County border, and that waste generated in Horry County accounted for a portion of the total waste accepted for disposal at the Sandlands landfill prior to the enactment of the Flow Control Ordinance.

The plaintiff Express Disposal Service, LLC (“EDS”) is a privately-owned South Carolina company which operates a waste hauling service in southeastern North Carolina, and in northeastern South Carolina. The record indicates that prior to the enactment of the Flow Control Ordinance, the scope of EDS’s business included transporting solid waste from Horry County to the Sandlands landfill in Marion County.

II. NATURE OF THE CONTROVERSY

Prior to the effective date for the enforcement provisions of the Flow Control Ordinance, Sandlands and EDS brought suit in the Court of Common Pleas for Horry County, South Carolina, to enjoin enforcement and to invalidate the provisions of the Flow Control Ordinance. The plaintiffs’ complaint includes a request for an award of damages. The action was removed to the United States District Court for the District of South Carolina on May 22, 2009. Following removal, the District Court denied a motion for injunctive relief. Thereafter, the enforcement provisions of the Flow Control Ordinance took effect. The plaintiffs have moved for certification of the claim that the Flow Control ordinance is facially invalid because the ordinance is preempted by the South Carolina Solid Waste Policy and Management Policy Act, S.C. Code Ann. § 44-96-10, *et. seq.*

III. CERTIFIED QUESTION OF LAW

1. Does the South Carolina Solid Waste Policy and Management Act, S.C. Code Ann. § 44-96-10, *et. seq.*, preempt Horry County Flow Control Ordinance 02-09?

Signed this 28th day of June, 2010, in Florence, South Carolina.

s/Terry L. Wooten
United States District Judge